IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Bail Appl..No. 7656 of 2007()

CRMP.3991/2007 of DISTRICT COURT, PALAKKAD
C.R. 25/07 OF CHERPULACHERY EXCISE RANGE

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PETITIONERS/ACCUSED

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1. SUKUMARAN, S/O UMMIN RAMAN,
   AGED 55 YEARS, CHERKULAM, THEKKUMMURI,
   CHERPULASSERY, OTTAPALAM TALUK,
   PALAKKAD DISTRICT.

2. M.RAJAN, S/O NARAYANAN,
   AGED 32 YEARS, MANGALASSERY,
   PANNIYAMKURUSSI, CHERPULASSERY,
   OTTAPALAM TALUK, PALAKKAD DISTRICT.

3. C.K.MOHANDAS, S/O RAVUNNI,
   AGED 26 YEARS, CHOORAKKAL, KARAIMANNA,
   CHERPULASSERY, OTTAPALAM TALUK,
   PALAKKAD DISTRICT.

4. DILEEP, S/O KUTTINARAYANAN,
   AGED 32 YEARS, VALIYA PARAMBIL HOUSE,
   CHERUKATTUPULAM POST, VANIAMKULAM,
   OTTAPALAM TALUK.

BY ADV. SRI.K.RAMAKUMAR (SR.)
SRI.T.RAMPRASAD UNNI
SRI.A.SAMEER
SRI.R.JAYACHANDRAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE EXCISE INSPECTOR,
   CHERPULASSERY.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7656 OF 2007

Dated this the 12th day of December, 2007

O R D E R

Petitioners are employee(A1) and licensees(A2 to A4) in a crime registered, inter alia, under Section 57(a) of the Kerala Abkari Act. The crux of the allegations against them is that the toddy which was found available in the toddy shop was found to contain diazepam, a psychotropic substance. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the investigation is practically completed now. There is absolutely no necessity for arrest and custodial detention. In these circumstances, anticipatory bail may be granted to the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances whatsoever which can justify the

invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioners may be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, it is submitted.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. Powers under Section 438 Cr.P.C. are to be invoked sparingly and in exceptional cases that too only in aid of justice. An order under Section 438 Cr.P.C. virtually converts a non-bailable offence declared by the legislature to the status of a bailable offence. The Section does not specify the circumstances under which such extraordinary powers can be invoked. Such invocation of powers can only be when the court is persuaded by compelling reasons to hold that the invocation of the power of arrest would result in injustice and prejudice of an exceptional variety. In these circumstances, I am satisfied that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public

Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

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